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An Analysis of the U.S.-Canadian East Coast Fisheries Resource Agreement

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AN ANALYSIS OF THE U.S.-CANADIAN EAST COAST
FISHERIES RESOURCE AGREEMENT

BY

MICHAEL V. GUIMOND

A MAJOR PAPER SUBMITTED IN PARTIAL FULFILLMENT OF
THE MASTERS OF MARINE AFFAIRS PROGRAM

UNIVERSITY OF RHODE ISLAND
1979

PREFACE

I would like to use this section to clarify several aspects of this paper which make it different from the standard research paper. First, this paper is the culmination of nearly ten months of working on this issue, as such it is a subject that I am thoroughly familiar with. This familiarity has enabled me to incorporate a lot of material into a fairly condensed form. For example in the section on Agreement Annexes I make reference to the course of the negotiations quite frequently. These references are for the most part one sentence notes. However, to arrive at these abbreviated conclusions required breaking down nine sets of the negotiating delegation's working papers, chronologically, on a species by area basis, and putting this breakdown into tabular form. I have not annexed this material to this paper because of the sheer volume involved. In the same vein I have mentioned the House Hearings held on this issue several times in the course of this paper. I did not deem it necessary, for the purposes of this paper, to include the testimony I prepared for these Hearings in order to make these observations.

A second aspect of this paper which needs clarification is the absence of footnotes. I did not consider these necessary or practical for the following reasons. Being a contemporary issue there hasn't really been much published material on it. There has, in the last six months, been several trade journal and newspaper articles on the Treaty, such as the June issue of the Maine Commercial Fisheries. However, the information for most of these was obtained from myself or associates who also worked on this project. The technical information and catch data contained

in this paper comes from either computer print outs obtained from the Northeast Fisheries Center, the NMFS Data Summary on this Treaty, the NMFS Short Run Economic Analysis of this Agreement, the Agreement itself, or general knowledge. Information from these sources is interspersed throughout this paper in a hodge podge fashion and it was simply impractical to use footnotes. Two specific references do need to be made. There is some geographical information contained in the Abstract of this paper which was obtained from an article in Oceanus by Dr. Alexander. Also, on page seventeen of this paper there is a one sentence summary on the number of Treaties concluded with Canada since 1950. This one sentence represents thirty five hours of research done by Dudley Baker, a student in the Marine Affairs Program, in a professional capacity for the American Fisheries Defense Committee. I would also like to acknowledge the insight I gained about this issue from other members of the A.F.D.C. and other people I met while working on this project.

Throughout this paper, when defining the various issues and problems, constant cross reference is made to Canada's position in relation to this Treaty. This is not meant to knock Canada or imply that Canadian fishermen are an inherent evil when they are in U.S. waters. It is just that in this particular business Canada was the opposition. Most people I know express admiration for the Canadian negotiators and the deal they were able to secure for their industry.

The U.S. government, in defense of this Agreement, has

enumerated a number of benefits to be gained, and dire consequences to be avoided, with the ratification and implementation of this Agreement. These are perceived as such because of a particular point of view. The government's position is not presented in this paper, although several points are used for the purpose of illustration. I would refer the reader to the various papers published by the government if one is interested in this perspective.

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ABSTRACT

The U.S.-Canadian East Coast Fisheries Resource Agreement, signed March 29, 1979, is a bilateral agreement which stipulates terms for the management and allocation of, and access to, fishery resources located on Georges Bank, in the Gulf of Maine, and substantial tracts of adjacent waters in the U.S. and Canadian 200-mile fishery zones. For the purposes of this Agreement, the old ICNAF designations were used in defining the different geographical regions covered by this Agreement. These are Areas 4V, 4W, 4X, 5Y, 5Z (east and west), and 6. Area 4 is predominantly Canadian waters and 5 and 6 are predominantly U.S. waters. Also signed on this date was a "Treaty To Submit To Binding Dispute Settlement The Delimitation Of The Maritime Boundary In The Gulf Of Maine Area". The U.S. and Canada have a long standing dispute over the location of the international boundary in this area. This maritime dispute has been particularly acute since 1977 when both countries enacted 200-mile fishery conservation zones which overlap. The U.S. claim encompasses all of Georges Bank, considering it as a natural prolongation of the U.S. continental shelf. The basis for this claim is the concept of special circumstances or equitable principles, which are accepted norms in international forums, such as UNCLOS III, for delimiting maritime boundaries. Their validity in this particular instance is yet to be determined. Canada's claim encompasses the northern third of Georges Bank as part of their 200-mile fisheries zone. This claim is based on the equidistance formula and also is an accepted international norm. The area of overlapping claims is approximately 5,500 square nautical miles in area, is an extremely productive fishing ground, and fishermen of both nations have established rights in this

region. There are also two areas to the north of this one where ownership is yet to be determined. The first of these is an area of approximately 1400 square nautical miles located between Georges Bank and Machias Seal Island, and the other is approximately 400 square nautical miles around Machias Seal Island. This Treaty, and two accompany Agreements outline the procedure by which this dispute will be submitted to binding third party settlement. They do not actually settle the dispute and it will very likely be several years before the boundary is finally determined. This is likely because the first stage of this procedure is to submit the dispute to a special chamber of the ICJ. If this chamber is not constituted within six months after these Agreements enter into force, then the two Parties have the option of submitting the dispute to a court of arbitration, composed of five persons mutually agreed upon by the two governments. As such the time framework for the actual delimitation of the boundary is an unknown variable. The Fisheries and Boundary Dispute Agreements are linked by the fact that neither can enter into force unless both do.

During 1977 an interim agreement was in effect which allowed fishermen of both countries access into the other's undisputed zone, allowed both to continue fishing in the disputed zone with no expansion of effort, and excluded third parties from the disputed zone. This interim regime broke down in mid-1978 over disagreement about management policies and levels of effort in the Georges Bank groundfish and scallop fisheries. As a result both countries now prohibit the other from fishing in their undisputed zones. This situation is pointed to by the U.S. Government

as a reason why this Fisheries Agreement should be accepted at this point in time. Failure to do so will result in "anarchy" on Georges Bank. Perhaps, but regardless of an agreement U.S. fishermen will be operating under FMP's promulgated by the NERFMC, and Canada has a long record of sound management policies. Both countries have too much at stake in the long run to allow any type of rampage by their fishermen.

The Fisheries and Boundary Dispute Agreements have been sent to the Senate Foreign Relations Committee where they are pending action. Due to the discontentment with the Fisheries Agreement, by large segments of the fishing industry, there is a strong possibility that reservations to certain aspects of it will be attached before the Agreement is sent to the floor for a ratification vote. Canadian officials have stated that any changes made to the Agreement, as signed, would be unacceptable and would negate the entire deal. This remains to be seen. The House Subcommittee on Fisheries and Wildlife Conservation and the Environment held hearings on this issue on 6/22/79. It is unusual for the House to hold hearings before a treaty is ratified. This occurred in this particular instance because of the interest and controversy generated over this issue. A basic commitment was made at these hearings to the effect that nothing would be incorporated into the implementing legislation, after this Treaty were ratified, that would infringe upon the prerogatives of the fishing industry or Regional Councils, as defined in the FCMA.

INTRODUCTION

This analysis of the U.S.-Canadian East Coast Fisheries Resource Agreement was initiated at the request of a group of fishing industry representatives concerned about some of the terms enumerated in this document. The purpose behind this research project was threefold. First, to determine if this Agreement was consistent with the intent of the FCMA. There was considerable concern about the management provisions contained therein and the role of the Regional Councils in relationship to the federal government. It was felt that this Agreement had the potential for diminishing industry's prerogative in these areas. Second, to determine the economic impact of this Treaty upon the New England fishing industry. Logically enough this was an overriding concern. The third purpose, which is not in the scope of this paper, was to aid in determining what the response of the user groups should be.

I raise this point about industry impetus right off for a very simple reason. If you are concerned about the interests of an industry, and a conflict exist with another sector, then there is a tendency to reject assumptions which might be accepted by others. In this case there were certain assumptions used by the federal government, in negotiating this Treaty, which from an industry perspective are detrimental.

For example, the U.S. negotiators accepted the years 1965-77 as the basis on which to determine both countries share entitlements under the Agreement. This thirteen year span was

supposed to reflect a historical perspective as to both countries annual average harvest. On the basis of these averages the two sides received certain percentages as their final share entitlement. If you accept this thirteen year span as adequate then, as is pointed out as a benefit of this Agreement, "the shares of the total allowable catch (TAC) which the U.S. is entitled to take under the Agreement exceed the historical U.S. shares in the case of sixteen stocks". However, this basic thirteen year parameter, from an industry perspective, is inadequate for very valid reasons. These years were the most intensive ones for foreign fishing activities up and down the Eastern seaboard anywhere outside the twelve-mile zone and in particular on Georges Bank. This activity included a tremendous growth in the presence of a subsidized Canadian fleet on Georges Bank. More importantly this thirteen year span does not take into account a very fundamental change in U.S. policy and what has occurred since the implementation of the FCMA in 1977.

Another basic assumption used in defending this Agreement is that future U.S. harvests (1980) would be the same with or without a Treaty. The reasoning here is that FMP's developed by the NERFMC will put the same ceilings on U.S. harvests as will this Treaty. This is not known and is certainly not supported by recent growth rates in the harvest of certain stocks.

A breakdown of the scallop share issue demonstrates the inadequacy of these two basic assumptions. First, the average U.S. scallop harvest in the 1965-77 period was 19.9% and under the Agreement it is 26.65%. However, if one looks at the 1944-77 period(which is perhaps more of a historical perspective) the

U.S. average share was 59.9%. On the other hand the U.S. share in 1977 and 1978 was 26.9% and 31.4% respectively. This translates into a 17.5 and 31.1 million dollar harvest in 1977 and 1978. Under the Agreement, using projected TAC's, the U.S. scallop industry will be reduced from a harvest of 5569 metric tons in 1978 to 3652 metric tons the first year of the Treaty. This 35% reduction represents a loss of approximately \$10 million. In view of recent harvests, recent investments, and the state of this stock in waters clearly U.S. (which is explained further into this paper) to expect this industry to accept this type of loss is asinine.

OBSERVATIONS

The first stage of this research project was one of attending meetings, talking with participants, and general observation. Due to this issue's contemporary nature this was the best, and only, way to gain some insight into the style of the negotiations and the various issues. I believe these observations are relevant because cognizance of these contributes to a more complete understanding of the issue.

In the negotiations with Canada the U.S. was represented by a special Ambassador to Canada, who was assisted by a State Dept. and NMFS staff. This staff was composed of lawyers, policy planners, statisticians, etc. Also serving on the U.S. side was an advisory panel of fourteen representatives from the fishing industry. As one would expect, the composition of this panel reflected the diversity of the New England industry. Several of these advisors doubled as members of the NERFMC. The function of this panel was to provide input to insure that the interests

and needs of the fishing industry were perceived and incorporated into the U.S. position. The forum for this input was meetings, usually in Boston, of the entire U.S. side, either prior to or following a negotiating session with the Canadian side. At these meetings the negotiations would be updated and information and viewpoints would be exchanged. The advisory panel did not participate in the actual negotiations.

The one preconceived notion that I had when I first approached this issue was, given the nature of the industry and resource, there would be an abundance of problems facing solution and complaints being voiced. This expectation was amply realized. One heard that "the government was giving it away" and "trying to screw the industry". However, beyond the rhetoric some concrete issues were being addressed.

Some of these issues reflected the self interest needs of the various segments of the fishing industry. F.i., there was a conflict over the issue of balancing an allocation for U.S. redfishermen in Canadian waters with a Canadian allocation for loligo squid in U.S. waters. Northern Maine redfishermen were, logically enough, primarily interested in securing the most advantageous deal for their industry. They developed this industry and were concerned about its health if access into Canadian waters was not reinstated. On the other hand, Southern New England, and Mid-Atlantic, representatives were concerned about granting Canada access, for the first time, into the squid fishery and possible bycatch and gear conflict problems. Additionally, in the last couple of years segments of the American industry have been attempting to develop their capacity to exploit this

resource, primarily for the export market. I heard concern expressed about competing in a foreign market with a product harvested in U.S. waters. Another significant issue was the dissatisfaction expressed over the allocation U.S. scallopers were to receive on Georges Bank. It was viewed as inadequate in relation to the fact that the greater portion of Georges Bank is already clearly U.S. waters, and the disputed zone is still up for grabs. Another problem was the worth of the U.S. groundfish allocation in Canadian waters compared to the Canadian allocation in U.S. waters.

Despite, and in addition to, these differences there were some areas of common dissatisfaction. A common complaint was that industry positions were not being taken seriously by the government. For example, at the meeting where the duration of this Agreement was discussed there was some disagreement amongst the advisory panel as to the desirability of a three year agreement as opposed to a five year agreement as opposed to a ten year agreement. However, there was a consensus as to the undesirability of a permanent resource agreement. Yet this condition was accepted by the U.S. negotiators and incorporated into the final text.

Equally vexing was the whole question of why wasn't the U.S. government using one of its best available levers in negotiating a better deal. I am referring to the importance of the U.S. domestic market to the Canadian fishing industry. The U.S. market is Canada's prime export market for products such as cod, haddock, lobster, and scallops. In 1977 alone Canada exported over \$100 million worth of cod products to the U.S. Overall in 1977, the U.S.-Canadian balance of trade in fish products was over \$331

million in favor of Canada. These products come into this country with very little or no tariff duties imposed on them. In addition is the fact that the Canadian fleet is a well subsidized one. The efforts of the fishing industry and academic community to petition the Treasury Dept. to impose countervailing duties are well known and documented. The failure of the government to use this situation as a bargaining tool gave the impression that the non-competitive advantage enjoyed by Canada in our mutual fish market was simply being reaffirmed.

Another general area of concern was the notion of what other aspects of U.S.-Canada relations were being considered in relation to the negotiations on this resource Agreement. There are numerous other areas of mutual concern between the two countries which equal or surpass the economic and political importance of a Fisheries Agreement. The question was if the fishing industry were being asked to sacrifice its interests then what were the other considerations? The government line was that this Agreement was being negotiated on its own merit without any cross reference to other issues, including potential oil and gas exploration on Georges Bank. This position was perplexing as it is very unlikely that any one international issue will operate in a vacuum. However given this insistence, any deficiencies in the Agreement are that more striking.

The extent of industry dissatisfaction with this Agreement is reflected in a few facts. Several members of the advisory panel, and others, financed and actively organized an opposition to this Agreement, i.e., the American Fisheries Defense Committee. This committee's position was supported by a variety of industry

organizations and businesses, both coastwise and nationally. In fact, its objections were supported by and did reflect those of a clear majority of the fishing industry in New England. Also consider that at the House hearings on this issue, Congressman Studds asked the question " why were ten of the fourteen industry advisors opposed to the Agreement, as signed, with the remaining four having reservations about certain aspects of it"?

The tendency of the U.S. negotiators not to take into full account the wishes of the fishing industry seems to have carried over to the treatment received by the NERFMC. There were several requests made early on in the negotiations by the NERFMC which were not realized nor incorporated into the U.S. negotiating position or the final settlement. These requests were made in the form of letters from the Council to the State Dept. or its special negotiator. One of these requests was that Council members be included as active participants in the negotiations. This was reasonable considering that the stocks under consideration were under the NERFMC's jurisdiction. As it turned out the Council was relegated to the same advisory position as the industry. Another recommendation was that the boundary dispute be settled before the negotiation of a fisheries agreement. Obviously this request was not realized either. Additionally the Council had explicitly stated that redfish, among others, be considered only on a transboundary basis, i.e., joint management. Yet in the final settlement Canada secured exclusive management authority over redfish in 4VWX.

In analyzing the actual Agreement I split the work into two broad areas. The first focuses on the 25 Articles of the Agreement. These Articles provide the basic guidelines for the overall operation of this Treaty. These Articles are fairly explicit in the sense that upon reading them one gets a clear idea as to how the principles and concepts of this Agreement are suppose to operate once it enters into force. On paper it all looks and is good. However, some problems are discernible when some of these terms are applied to real conditions and situations. For example, granting Canada management rights in U.S. waters is necessary for the purposes of this Agreement in its present form. However this action seems contrary to the principle of exclusive jurisdiction as defined in Sec. 102 of the FCMA. This action also seems premature because once the boundary is determined, certain stocks on Georges Bank which are now deemed trans-boundary due to the existence of a disputed zone, and which provide the justification for Canadian management rights in U.S. waters, may no longer be considered as such.

The second section summarizes the Annexes of this Treaty. These Annexes ("A", "B", "C") provide the specific terms of both countries shares, management rights, and access into the different geographic areas. A synopsis of these Annexes comprises Appendix A of this paper. Also included in this summary are notes on the course of the negotiations as derived from the various working papers of the U.S. negotiating team.

AGREEMENT ARTICLES

The first 17 Articles of this Agreement are concerned with the establishment of a fishery management apparatus and its

procedural guidelines. The two Parties (U.S. and Canada) are to each appoint seven members to fill their respective national sections, with the two sections to compose a joint fisheries commission. These members serve at the pleasure of their respective governments. The U.S. side will be composed of two federal officials, three members of the New England Regional Fisheries Management Council, and two members of the Mid-Atlantic Regional Fisheries Management Council. Decisions which fall within the purview of the U.S. side of the Commission will be made according to majority rule, and at the Commission level the U.S. side will present a singular stance. For decisions falling within the purview of the Commission each side will have one vote and Commission action will require concurrence.

The two Parties will jointly appoint two Co-chairmen who will serve at the pleasure of the appointing Parties. These Co-chairmen are empowered to make binding decisions with regard to disputes over management measures. They can hear and decide other Commission disputes. However, in these instances the Parties have the right, jointly or independently, to appeal the Co-chairmen's decision to the Arbitrator.

The Arbitrator is appointed jointly by the Parties for a five-year renewable term, and serves at the pleasure of the Parties. This Arbitrator is to be national of neither Canada or the U.S.. If the Parties cannot agree on the selection of an Arbitrator, the President of the ICJ will be asked to appoint one. All disputes and actions taken under the Agreement are, in fact, referable ultimately to the Arbitrator. The arbitration process under this Agreement basically parallels that of a courtroom, with the submission of evidence, the calling of

witnesses, examination, and cross-examination. The Arbitrator's decisions are to be final and binding upon the Parties, with either Party having the right to request a review.

In addition to appointing all the participants in this rather elaborate management apparatus, the two national governments also have an active role in the formulation and execution of measures. If the Commission cannot agree on matters of business a dispute can be referred to the Parties, the Co-chairmen, or the Arbitrator for resolution, in this order. For example, if the Commission does not agree on joint management measures, the two governments themselves are empowered to negotiate and settle the differences. Failing agreement between these two, the matter is then referred to the Co-chairmen for resolution. This alternative decision making process seems logical and necessary, and it probably is. However what is troublesome is the fact that even if the Commission does agree on management measures the Parties have the right to intervene and object. In the case of joint management if the Commission agrees on measures the Parties still have thirty days to push the matter to the Co-chairmen. The point is that the Commission is fully subject to government intervention.

Other types of decisions are handled directly by the national governments and never come before the Commission for consideration, such as filling appointments. Also, Article IX of the Agreement provides for the renegotiation of the share entitlements every ten years. However this will occur only if either or both of the Parties request it. Overall the decision making role of the Commission would appear to be somewhat emasculated.

Types of decisions to be made by this new management apparatus include the annual setting of the total allowable catch (TAC) for the various species covered by the Agreement, the establishment of relevant management measures, and the setting of the fishing year. Other management measures can include the designation of fishing zones, gear regulations, and trip limits.

Article X of this Agreement lists seven guiding principles which are to be considered and adhered to when management action and decisions are being initiated. The first three are the concept of optimum yield, the use of best scientific information, and the inter-relationship of stocks. These principles are the same as those in Sec. 301, National Standards, of the FCMA. In matters of practicality these standards are very difficult to define and apply in the formulation of FMP's. This difficulty is apparent if one considers the problems that the NERFMC has had in the last two years in these matters. The point has been raised that these concepts will be even more difficult to interpret and apply on a bilateral level, especially if in conjunction with an elaborate management system. The last four guidelines in Article X pertain in particular to the operation of this Agreement. These include efficient administration, minimization of costs, avoidance of unnecessary duplication, avoidance of disruptive changes in fishing patterns, assuring each party the opportunity to harvest its entitlement, insuring each party access where provided for in the Annexes, and nondiscrimination.

There are basically three decision making procedures to be followed in the formulation of management plans.

The first is the joint management (Category A) of those stocks listed in Annex A. For these the Commission initiates the management proposals, and if it cannot agree the two governments's attempt to do so. If direct Party negotiations fail the Commission can reconvene or the matter can go to the Co-chairmen. Moreover, if the Commission does agree on initiated proposals the Parties can still object and have this matter submitted to the Co-chairmen for resolution. If the Co-chairmen do not reach an accord then either Party may refer the dispute to the Arbitrator. After the Agreement is in force management decisions can remain in effect beyond a specified fishing year until new plans are concluded.

The second procedure is where one of the Parties has the primary responsibility (Category B) for initiating management plans for those stocks listed in Annex B of the Treaty. The Party of primary interest proposes management measures to the Commission, which can either agree with these or propose modifications. However if the Party of primary interest objects to any modifications by the Commission then they do not enter into force. Additionally the other Party can also contest the consistency of proposed plans or modifications, in relation to Article X, and by so contesting the matter is then referred to the Co-chairmen for consideration. The Co-chairmen are to be guided by this Article in their determinations. If the Co-chairmen are unable to settle then the matter will be decided by the Arbitrator. I have heard quite a few people, who are involved in fisheries

management, make the observation that in terms of providing both parties the opportunity to participate in the formulation of management plans, there is not much difference between Category A and Category B management procedures.

The third procedure provides that one of the Parties will exercise exclusive jurisdiction (Category C) over the management of those stocks listed in Annex C of the Treaty. This category is similar to Sec. 102, Exclusive Fishery Management Authority, of the FCMA. The Commission serves only as a forum for consultation for Annex C stocks. The only obligation of the designated party is to provide the other party with access and entitlements as stipulated in Annex C.

Entitlements are established for each of the stocks listed in the three Annexes. The basis for these percentages was explained in the introduction. Additionally, Article IX provides for the renegotiation of the share entitlements every ten years, if the Parties request. The formula for these adjustments is as follows: If a Party had an entitlement of 50% or more upon entry into force of this Agreement, then it may be reduced by as much as 10% of this at ten year intervals. If its original entitlement was less than 50% the reduction is limited to 5%. These ten year incremental adjustments are limited to an overall reduction of one-third of a Party's original share. If the Parties cannot agree on an adjustment the Arbitrator is empowered to do so. The Arbitrator is to be guided in his decisions by the location of the stock in relation to the boundary, to reduce economic and social impacts on coastal communities, and significant changes in the value, abundance, or availability of the stocks.

Article IX is seen by proponents of the Agreement as providing a necessary amount of flexibility in is what an otherwise inflexible agreement. This provision provides for change and is therefore viewed as a type of safeguard. However, in several important instances these appear to be onesided safeguards which protect Canada's interest more than the U.S. F.i., if the U.S. wins the boundary dispute all of the Georges Bank scalloping grounds would be in our FCZ. Yet it would still take the U.S. at least 30 years to have its share entitlement for scallops adjusted upward to 50%. At this point any further gains are precluded. If the U.S. were to lose the boundary dispute outright, two-thirds of Georges Bank scalloping grounds would still be under U.S. jurisdiction. Yet theoretically the U.S. scallop share could be reduced to 17%. In the case of herring, Canada's share in 5Z and 6 will always be at least 22% of the TAC. This is much more than any type of previous performance by Canada in this area. Regardless of the boundary settlement Canada will, in perpetuity, have 12% of the cod in 5Z and 14% of the haddock in area 5. On the other hand the U.S. is guaranteed only 5% of the cod in 4X and 6% of the haddock in 4VWX.

Once management plans are in force they are to be enforced by each Party in its respective undisputed zone. Pending delimitation of the maritime boundary enforcement in the disputed zone is by the flag state. In areas of exclusive jurisdiction that Party can require permits and observers.

Amendments to the Agreement can be made at any time the Parties agree to them. Included in this could be an agreement to terminate this Treaty. However, barring this occurrence the Treaty is, for all intents and purposes, a permanent one. This is stipu-

lated in Article XXV, Sec. 2, which states "this Agreement shall remain in force until terminated by agreement of the Parties". The only exception is if the ICJ chamber to settle the maritime dispute is not constituted within six months and the Court of Arbitration is not constituted within a year and a half after the Arbitration Agreement enters into force. If these requirements are not met then either party may abrogate the Fisheries Agreement. This situation is not likely to develop because stumbling block to the settlement of the maritime boundary had been the allocation of fishery resources. The Fisheries Agreement takes care of this problem and as such the boundary settlement becomes a secondary issue.

What this means is that the U.S. can negate or withdraw from this Treaty only with Canadian concurrence. This is not likely to occur given Canada's adamant position that the Fisheries Agreement be a permanent one. The customary norm for the U.S. in concluding bilateral agreements or entering into multilateral conventions has been to provide for a specific termination date or a provision for unilateral withdrawal following notification. In the case of fisheries, and prior to the FCMA, the U.S. concluded numerous fishery agreements. These were either with nations desiring to fish off our coasts, such as the Soviet Union, or conventions like ICNAF. Since the FCMA the U.S. has concluded numerous GIFA's with nations desiring access in our FCZ for their distant-water-fleets. Specifically, with Canada, since 1950, the U.S. has concluded 230 bilateral agreements, thirteen of which pertain to fisheries, with two of these requiring ratification. In 1977 and 1978 the U.S. and

Canada operated under interim agreements for the same stocks now being considered on a permanent basis. Of all these past agreements none have contained such option limiting clauses as this particular Agreement. Of course, agreements have been concluded which could exist in perpetuity if the parties agree, but all concerned still have unilateral rights. In this sense this Treaty is an aberration from the norm.

This permanence could be troublesome for a variety of reasons. First, if there are legitimate complaints about certain terms in the Annexes in reference to management or access rights then these inequities will be around for a long time. An industry perspective of this Agreement is that basically it is a business deal, and it is bad business to do business on a permanent basis. Bear in mind that it was Canada's position that this be a permanent deal and that it enter into force prior to the determination of a maritime boundary. It is doubtful that anyone would want to set something in stone if they were making out badly. From a business point of view, an important resource allocation issue is being settled before the primary fact of ownership has been determined.

Another cause for concern is the effect this permanency could have on the development of alternative approaches to fishery management. F.i. , under this Agreement the various species are locked into the different management categories, which in effect could restrict these to a uni-species approach. However, recently the New England and Mid-Atlantic Councils have been experimenting with a multi-species approach to management, as evidenced by the work on Groundfish and Atlantic Demersal Finfish FMP's. Another consideration is what effect

will Canadian participation in the management of such under-utilized species as pollock, whiting, and cusk have on work such as that of the Fisheries Development Task Force. Also, the NERFMC recently adopted a resolution to consider spawning closures and mesh size as an alternative to the quota system in determining permissible levels of commercial catch. This Agreement mandated the use of a TAC system, a concept which could be out of date before it enters into force. Overall council decisions would be subject to Canada's purview through the "A" and "B" management systems. Is this type of situation contrary to the intent of the FCMA?

Another point has been raised about the relationship of the Councils to the Secretary of Commerce under the Agreement in comparison to the FCMA. Under the FCMA, Sec. 304, Action by the Secretary, the Secretary reviews FMPs submitted by the councils, and if he disapproves the council is notified as to the reasons and suggest changes for resubmission. The councils get to work on the amendments or changes. Under the Agreement, and according to a draft of the implimenting legislation which would follow ratification, if, in review of FMP's submitted by the appropriate council for submission to the Commission, the Secretary discerns inconsistency with the governing principles of the Agreement, he is empowered to modify the plan and then only notify the council of the change. However, this was only a draft and at the House Hearings commitments were made by Congressmen to the effect that if this Treaty were ratified, nothing would be written into the implimenting legislation that would diminish the role of the councils as defined by the FCMA.

AGREEMENT ANNEXES

On a species by area basis this section will summarize the specific terms of the negotiations and final settlements. With regard to the negotiations the purpose was to touch on the more salient points of the give and take and to show who was doing the compromising. These notes are drawn from the various working papers of the U.S. negotiating team. In reference to the final settlements I have attempted to analyze those terms of the Annexes, either shares, management, or access, which are viewed as problematic to the interest of the fishing industry in New England.

Mackerel: Reaching agreement on this species does not appear to have been very difficult. The TAC is to be set jointly for ICNAF Areas 3,4,5,& 6, with the U.S. receiving 60% and Canada 40%. Fishing by each country for its entitlements is to occur only within its own undisputed waters and in the disputed zone until the boundary is determined. Beyond the setting of the TAC each country, in its own waters, is to establish management regulations pursuant to Category "B" procedure. The reason agreement was easily reached is that there is enough mackerel to go around, especially since the cutback in third countries fishing for this. The projected TAC for these four areas is over 53 thousand metric tons. In 1978 the U.S. harvested only 1300 metric tons and Canada harvested 22,000 metric tons.

Pollock: There was agreement from the start that pollock would be jointly managed, then it was agreed that there be

reciprocal fishing in Areas 4X and 5Ze. The problem with regard to this stock is the final share entitlement. The U.S. had originally requested 30% of the TAC and in the end settled for 25.6%. While the U.S. came down 4.4% from its original position, Canada did not alter its original position. This final share do not reflect the recent increases in the harvest of this stock by N.E. fishermen. In 1977 the U.S. caught 34% of the U.S./Ca. total, and in 1978 it was up to 40%. Using projected TAC's the U.S. catch will be reduced to 10,200 metric tons the first year of the Agreement, from 17,700 metric tons in 1978. This is a 43% reduction and represents a loss of approximately 2.75 million dollars. In absolute terms this may not be that much, however this could have a concentrated impact on a port such as Gloucester, which in 1978 landed over one-third of the N.E. pollock harvest. On the other hand the Canadian share under the Agreement is an increase over its 1978 harvest. The real crux of this problem is that U.S. fishermen and fisheries managers contend that more pollock is available in U.S. waters than the U.S. receives under the Agreement. This contention is borne out not only by the 1978 harvest but also by the NMFS Data Summary package for this Agreement, table 1-4. Additionally, access into Canadian waters for pollock, under the Agreement, would appear to be of limited usefulness in light of past performances by U.S. fishermen in those waters. The U.S. average harvest for pollock in Area 4X for the 1963-1975 period was only 538 metric tons.

Cusk: The Canadian proposals for dealing with this stock prevailed throughout the negotiations and comprise the final settlement. This stock was covered only in Area 5Ze. The U.S. had proposed that it manage this stock pursuant to Category "B" procedures. Canada's proposal was for joint management and in fact this was adopted, as was the Canadian proposal on share entitlements. The U.S. % of the U.S./Ca. total for the years 1976-78 averaged 50%, and under the Agreement its share is 34%. The value of cusk isn't that significant, in 1978 the value of the U.S. harvest from 5Ze was approx. \$150 thousand. Yet it is one of those under-utilized species, and the stock covered in this Agreement is in an area of our FCZ. What little was harvested in 1978 will be cut in half under the Agreement. This treatment raises questions of equity.

Atlantic Herring: For the stocks located in Areas 4WX and 5Y it was agreed that both sides would have "B" category management responsibility in their respective zones, although the U.S. had originally requested these stocks be managed jointly. However the management category in these areas is of no real consequence as neither side has access to the other's zone for any share. The important aspect of the herring settlement is with regard to the stock located in Areas 5Z and 6. Over this stock the U.S. will have Category "B" management responsibility. As was the case in most of the instances where the U.S. accepted "B" management in exclusive U.S. waters, this action was felt to be an infringement on the management prerogatives of the industry

and some fishery managers. Additionally, the Canadian allocation for herring in 5Z and 6 is a new one in the sense that previously Canada has not taken any appreciable amount of herring from this zone. In the course of the negotiations the Canadian share increased throughout, with a final settlement of 2000 metric tons per year for the first six years and thereafter one-third of the TAC. This situation could be troublesome for those Southern New England fishermen who have been attempting to develop this fishery in this area. This development is evidenced by a 1978 harvest of 2100 metric tons of herring in 5Z and 6 compared to 361 metric tons in 1977.

Sea Scallops: The resolution and disposition of this resource issue in Area 5Ze has been one of the more controversial, and there has been no satisfaction expressed by the New England scallop industry with regard to the final management, access, and share settlements. It is felt that Canada secured rights totally out of proportion to their property rights, which are only a legitimate claim to the disputed zone.

During the negotiations there were a number of management schemes proposed. The final management plan provides that the U.S. will have "B" authority to the west of the 68° 30' west longitude line, and Canada will have "B" authority to the east of this line. Additionally, setting the TAC and size limits will be done jointly. There are several problems perceived with this arrangement. First, west of this line is clearly U.S. waters, yet again the U.S. accepted "B"

management. Additionally, between this line and Canada's Published line is an area of approximately 5,600 square miles, which is also part of the U.S. FCZ, yet in these waters Canada has the primary management responsibility as well as in the disputed zone. As Canada harvests the great majority of its scallops from the northeast portion of Georges Bank, in the disputed zone, any movement of an arbitrated boundary line toward the U.S. position (which is a logical possibility) would place territory which is now in dispute, and extremely important to the Canadian scalloping effort, under U.S. jurisdiction. By allowing the management designation to be prematurely and permanently set at the 68 30 west longitude line, the U.S. relinquished management authority, as defined by the FCMA.

The final U.S. share of 26.65% is down 3.35% from its original position while Canada compromised only 2%. To get Canada to concede these two percentage points the U.S. increased Canada's cod, haddock, and loligo squid allocations. The problems with the final U.S. scallop share, relevant to economic growth, has been explained in the Introduction. Further consider that the NMFS concludes that on an average the U.S. scallop harvest in the disputed zone is only 10% of the 5Ze total. This could imply that in 1978, of the total U.S. 5Ze harvest of 5569 metric tons, 5000 tons came from exclusive U.S. waters. Additionally, the NMFS concludes that on an average Canada takes 13% of its 5Ze total from U.S. waters.- Yet under the Agreement the U.S. share in all of 5Ze, 3652 metric tons, is way

below that which is available in U.S. waters. As a side note, the NERFMC is now in the process of formulating a Scallop FMP, which will probably not incorporate the TAC concept.

Another important advantage that Canada secured in the scallop deal is the right of access throughout 5Ze. This will be important if Canada is unable to sustain catch levels, i.e. share entitlements, on the Northeast Peak of Georges Bank. If the need arises Canadian fishermen will have the right to come down into Southeast Georges and the South Channel. These areas are the important ones for U.S. fishermen. The potential for increased competition in a constricted and heavily fished area imposes an additional disadvantage on U.S. scallopers.

Atlantic Cod: The stocks located in Areas 4VW, 4X, 5Y, and 5Z are covered by this Agreement. The Canadian proposals for shares and management prevailed throughout the negotiations and comprise the final settlements. For the stocks in Areas 4VW and 5Y both sides have exclusive management authority, category "C", in their respective zones. They also have reciprocal access rights with a bycatch allocation of 1.6%. These terms represent a basic trade-off situation. In area 4X Canada has category "C" authority, and the U.S. share allocation is 7.5% of the TAC. This U.S. share does exceed what the U.S. has previously taken from 4X. Considering this, the cost of fuel, and the relatively small number of U.S. vessels which make the trip to 4X, the value of the U.S. entitlement in 4X is somewhat questionable.

Additionally, U.S. access in 4X is restricted to offshore areas. The terms of this section in the Annexes prohibits U.S. fishermen from cod fishing for the inshore stock on the Nova Scotian shelf, at distances up to 40 miles from the Nova Scotian coast. This condition is viewed as a protectionist device for Canadian inshore fishermen. In Area 5Z the U.S. accepted category "B" management authority, and Canada is to receive 17% of the TAC. Canada will have access rights to within 12 miles of Cape Cod, where an inshore stock of cod is located. The U.S. side did not see cause to adopt a device to protect inshore Cape fishermen, such as Canadian fishermen will enjoy in 4X. Also, the NMFS concludes that 95% of Canadian ground fish harvested in Area 5Z comes from the disputed zone. If this is the case why was it necessary to extend Canada's access rights throughout this area.

While the percentage points that both sides receive for cod in the others' zone approximate past or present trends, there are still some problems with the final share entitlements. Using projected TAC figures, the U.S. will receive approximately 1200 metric tons of cod from Canadian waters, on an annual basis. Canada will receive approximately 5300 metric tons from U.S. waters (including the disputed zone). The New England groundfish industry has been declared conditional by the NERFMC, which means it is considered to possess the capacity to harvest as much groundfish as is allowed under the FMP's, within our FCZ. The point has been made that Canada's allocation in 5Z should be equal

to the U.S. allocation in 4X, and that any further Canadian entitlement in U.S. waters should be subject to the TALFF clause of the FCMA. Granted these are very selective arguments in this particular instance, but again, this depends upon your perspective.

Haddock: The stocks located in Areas 4Vw, 4X, and 5 are covered by the Agreement. The Canadian proposals for management and shares again comprise the final settlement. The U.S. had requested that both sides manage haddock according to category "B" procedure in their respective zones. Ostensibly this would have provided each side with some management rights in the other's zone. Canada agreed with U.S. "B" management in Area 5, however they requested, and secured, category "C" authority in Area 4.

As with cod the share entitlements approximate previous trends, however this also is a conditional fishery. The Canadian allocation in Area 5 (6700 metric tons) is approximately three times the U.S. allocation in Area 4VWX (2400 metric tons). The projected TAC for Area 5 alone is 32,000 metric tons, which is more than the U.S. receives for all areas under the Agreement.

Silver & Red Hake: For the stock located in Area 5Ze the U.S. again accepted category "B" authority, with Canada having a share entitlement of 10%. The Canadian share will not cut into U.S. harvest efforts because there are substantially greater amounts of hake available in 5Ze than the U.S. is currently utilizing. Still, a 10% allocation is much greater than any type of previous Canadian harvest in this area.

There have been questions raised as to the equity of the hake settlement. The fact is that historically the U.S. has harvested more hake in Area 4X than Canada has caught in 5Ze. The question is why wasn't the U.S., in the interest of equity, given comparable share, management, and access rights for hake in Area 4X. What is important here is a matter of principle. The domestic industry is being asked to accept this Treaty because of the benefits to be accrued in doing so, but these are difficult to perceive.

Atlantic Argentine: For the stocks located in Areas 4 and 5 Canada will have the primary management responsibility, category "B". An obvious question is why does Canada, and not the U.S., have primary responsibility in Area 5. In the negotiations the U.S. had requested that it have primary responsibility. The answer is that at one point the U.S. was willing to concede this if Canada would accept the U.S. redfish proposal. The ironic point is that the U.S. redfish proposal at this point was not finally accepted by Canada. Also, the U.S. had originally requested 50% of the TAC for its share entitlement but in the end accepted 25%. The treatment of this stock is all almost comical because in the 1965-77 period the total U.S./Canadian harvest of argentine in these areas was zero. Any inequities in the final settlement of this stock is really a matter of principle, and there is the question of the future development of underutilized species.

White Hake: For the stocks located in Areas 4 and 5 both

countries will have category "B" responsibility in their respective zones. This appears to have been the one species for which the U.S. was able to maintain its position in the negotiations, though this particular issue was not a critical one. Both sides will have reciprocal access rights for 6% of the TAC in the other's zone.

Illex Squid: Another non-critical species issue with both sides having category "B" responsibility in their respective zone, with neither side having access or share rights in the other's zone.

Atlantic Redfish: The stocks located in Areas 3-0, 3P, 4RST, 4VWX, and 5. Both countries will have exclusive jurisdiction over those stocks located in their respective zones. In Areas 3-0 and 3P the U.S. will have a share entitlement of 600 metric tons per year. In Areas 4RST the U.S. will receive 10% of the TAC for vessels based outside the Gulf of St. Lawrence. It is doubtful whether any U.S. fishermen will take advantage of these allocations. Reasoning, in the last three years U.S. fishermen have not taken any redfish from these areas, probably because of the distance involved and high trip costs. For the stock located in Area 5 Canada will receive only 1% of the TAC. This is low but approximates previous trends by Canada in this area. The crux of the redfish settlement pertains to that stock located in Area 4VWX, in which the U.S. will have a share entitlement of 35%. In this larger area it is, in particular, the northern portion of 4X that was important to northern Maine redfishermen. They have traditionally fished

in this area, evidenced by the fact that in the 1965-77 period U.S. fishermen harvested an annual catch of 7300 metric tons from 4VWX. In the negotiations the U.S. had requested 42.5% and ended up compromising 7.5% while Canada's position altered only 2%. The 35% U.S. entitlement, using projected TAC's, will be approximately 5700 metric tons with a value of \$2.4 million. This is an increase of \$1.5 million over the value of the 2146 metric tons taken in 1978.

In reference to management the U.S. had requested that Canada accept "B" category responsibility for the management of redfish in Area 4VWX and the U.S. would do likewise in Area 5. This was a reasonable request for a very obvious reason. The stock of redfish located in the northern Gulf of Maine and to the west of the Nova Scotian coast clearly interacts across the political line which divides 4X from 5Y. This is obvious if one looks at stock distribution maps, in this case I used one published by the Canadian Fisheries Service. Also in 1978 the overall harvest by U.S. redfishermen in this area was maintained despite access into Canadian waters being curtailed in June of 1978. This species, as much as any other covered by the Agreement in this area, warranted mutual management, which would have been possible under "B" category procedures. The fact that Canada secured exclusive authority, in the face of the U.S. request, undermines one of the main justifications for this Treaty. Also, all provisions pertaining to redfish expire after ten years.

Loligo Squid: For the stock located in Areas 5Z and 6 the U.S. will have category "C" authority, and Canada will have access rights throughout with 9% of the TAC as a share entitlement. In the course of the negotiations Canada's share entitlement increased from a small by-catch (1%) to 9%. This increase occurred in relation to the U.S. redfish allocation in 4VWX and also, in part, to the scallop issue. Canada's 9% entitlement, using projected TAC's will be approximately 3960 metric tons with a value of \$4.1 million, ex-vessel. This allocation is a new one in the sense that Canada has not previously harvested squid in these areas. All provisions pertaining to loligo squid also expire after a ten year period. Ostensibly redfish and loligo deals cancel each other out after a ten year period, however, one is a traditional fishery and one is not.

Summary of Agreement Annexes: Having touched on the various components of the Annexes, this section will round out some conclusions on the share, management, and access settlements.

In reference to shares the first thing to consider is the conclusion reached by the NMFS in its short run economic impact analysis of this Agreement. As mentioned earlier a basic assumption of this analysis is that future U.S. harvest (1980) would be the same with or without a Treaty. As I have pointed out in the preceeding summaries this assumption is refuted by recent growth rates and the availability of stocks. The conclusion of this analysis is that the U.S. fishing industry will lose \$4.327 million worth of resources if this Treaty does

not enter into force. This figure represents the value of the U.S. allocation in Canadian waters. It is true that without a Treaty, Canada could deny U.S. fishermen access to these resources. It is pointed out that this loss will have a concentrated adverse impact upon the ports of Rockland and Portland, Me., because of this total, the value of the U.S. redfish allocation in Canadian waters is \$2.668 million, and most redfish are landed in these ports.

This analysis stops at this point and is incomplete because it makes no mention of what the U.S. industry will lose under the Agreement nor does it detail the value of Canada's allocation in U.S. waters. By omitting these facts, and in conjunction with its' basic assumption, this economic analysis simplifies the whole issue and creates the impression that the U.S. industry can only gain from this Treaty.

The U.S. industry will lose approximately \$12.5 million the first year of the Agreement in its scallop and pollock harvest. This loss is relevant to 1978 harvest and the fact that more of these resources are available in exclusive U.S. waters than the U.S. is entitled to under the Treaty. The reduction for the scallop industry represents a \$10 million dollar loss and will certainly have a concentrated, adverse impact upon the port of New Bedford. This is especially true in light of recent heavy investments in the scallop fleet, which was prompted in part by increased harvests in the last couple of years. A forced redirection of effort into other fisheries, caused by this type of cutback, will only intensify the pressure on other segments of the industry, such as the already conditional

groundfishery.

There are two ways of looking at the value of the Canadian allocation in U.S. waters. The first is a total value, which includes the resources which would be harvested by Canada in the disputed zone. This figure would be over \$70 million dollars which, while correct, is not entirely accurate due to the fact that Canada does have a legitimate claim on this zone. A more accurate figure would reflect the value of those resources which Canada will harvest in exclusive U.S. waters. To compute this required the following information. The NMFS Data Summary on this Agreement concludes that on an average, of its total 52e harvest, Canada has taken 95% of its groundfish and 90% of its scallop from the disputed zone. By applying these percentages to Canada's share entitlement it is possible to compute that which will come from exclusive U.S. waters. Included in this would be the entire Canadian loligo squid allocation as this all will be harvested in U.S. waters. Computed in this fashion, the value of Canada's share entitlement in the U.S. FCZ is \$10.695 million.

If Canada does harvest better than 90% of its total in the disputed zone then why was it necessary to extend to Canada, and guarantee permanently, access rights into such vast areas of the U.S. FCZ. This means that this \$10 million figure could be greatly exceeded in future years. If Canadian fishermen are unable to sustain their efforts on the Northeast peak of Georges they have the guaranteed right to move into established U.S. fishing grounds, such as the South Channel and Southeast Georges. Bear in mind that ICNAF Areas 5 and 6 are the only areas available to support the New England and Mid-Atlantic fishing industries.

Increased competition in these limited geographical areas will only place additional burdens on this industry. On the other hand, the Canadian Maritime Provinces have access into much larger productive fishing grounds already located in their 200-mile zone. Again, a subsidized fleet is in a better position to take advantage of extended access rights, and as such these rights are of greater value.

It appears that Canada has secured exclusive management authority for those stocks located in its' own 200-mile zone, which are of economic importance to the U.S. industry. This is category "C" authority for the cod, haddock, and redfish located in Area 4, and the U.S. will not have any input into the formulation of management plans for these species. On the other hand the U.S. accepted category "B" authority for scallops, cod, haddock, herring, hake, etc., which are located in our FCZ. These stocks are of economic importance to Canada, and they have insured themselves the right to participate in the management of these.

It is the existence of a disputed zone which constitutes the main justification for the rights Canada is to receive in U.S. waters under the Agreement. In this paper I have tried to show that the implementation of this Treaty, as is, will cause some very real problems for the domestic industry. The whole point of this paper has been to emphasize the need to settle the boundary question first. Then, any subsequent fisheries agreement, and there is a need for coordinated management and conservation action, can be of a truly reciprocal nature, with both sides operating from clearly established positions. This type of situation could only be better than the present ambiguous one.

Map of the area covered by the U.S.-Canadian Fisheries Agreement

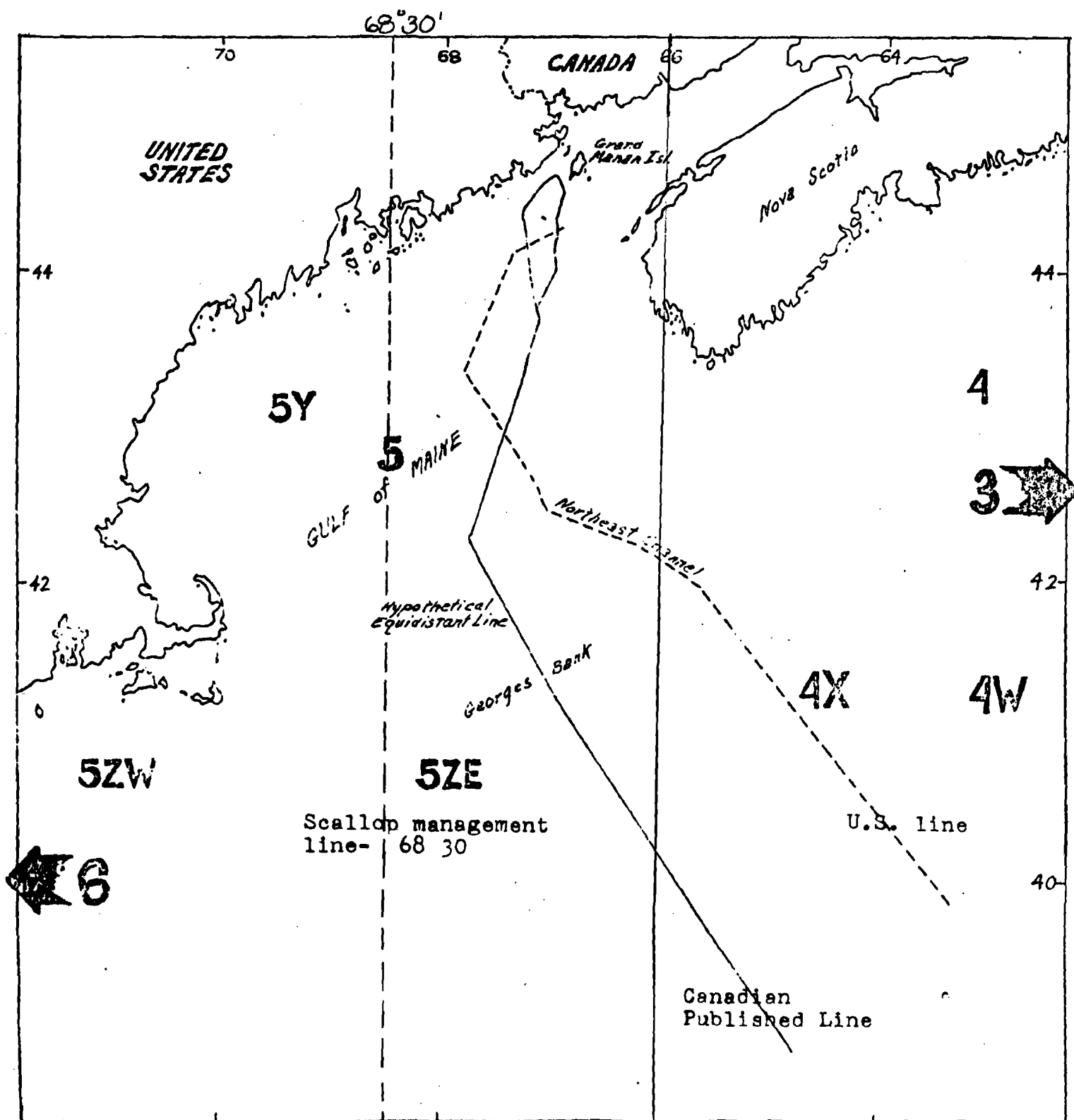


Table 1 This table computes the value of Canada's share entitlement from exclusive U.S. waters, not including the disputed zone. The NMFS Data Summary for this Agreement concludes that on an average, of the total Canadian harvest in all U.S. waters, 90% of its scallop harvest and 95% of its groundfish harvest comes from the disputed zone. By subtracting these percentages from Canada's total allocation in Areas 5 and 6 one can compute the value of those resources which will come from exclusive U.S. waters. Included in this value is Canada's total allocation for loligo squid as this resource is not found in the disputed zone.

<u>Species</u>	<u>Area</u>	<u>Ca. total allocation metric tons</u>	<u>% from U.S. FCZ</u>	<u>Metric tons from U.S. FCZ</u>	<u>Value</u>
Pollock	4VWX, 5	29,786 ¹	5%	260	\$ 96,720
Cusk	5Ze	330	5%	16.5	6,633
Herring	5Z, 6	2,000	100%	2000 ²	266,000
Scallops	5Ze	10,051	10%	1005	5,617,950
Cod	5Y	175	100%	175	95,725
Cod	5Z	5,200	5%	260	142,220
Haddock	5	6,720	5%	336	237,552
S. hake	5Ze	5,880	5%	294	17,404
R. hake	5Ze	1,600	5%	80	19,360
W. hake	5	206	5%	10	3,440
Redfish	5	100	5%	5	1,890
Loligo					
Squid	5Z, 6	3,960	100%	3960	4,165,920
Yellowtail					
Flounder	5, 6	215	5%	10	14,350
Other					
Groundfish	5	485	5%	24	9,888
TOTAL					\$10,695,052 ³

1. Of this total 17.5% is in Area 5 and of this 5% is from the U.S. FCZ
2. This stock of herring is generally considered to be located to the west of the disputed zone. In 1978 Canada did not harvest any herring from the disputed zone, therefore the entire share of 2,000 metric tons is computed.
3. Bear in mind that under the Agreement, Canadian fishermen will be guaranteed access into substantial tracts of the U.S. FCZ beyond the disputed zone. As such the value of the Canadian harvest from the U.S. FCZ could greatly exceed this \$10 million figure.

Appendix A- A non-analytical synopsis of the Agreement
Annexes "A", "B", and "C".

ATLANTIC MACKEREL

Stock: Located in Subareas 3,4,5, and 6.

Management: The total allowable catch and permissible commercial catch is to be determined under Annex A, joint management.

All other management issues are determined under Annex B procedures. Each party is the party of primary interest within its own exclusive fisheries zone, and pending determination of the boundary in the disputed area, each is the party of primary interest with respect to its own nationals and vessels fishing in the disputed area.

Access: Vessels of each party may fish in their own exclusive fisheries zones, and pending delimitation of the boundary, in the disputed area.

Entitlement: 60% U.S. , 40% Canada.

Additional Terms: The parties shall consult before allocating any surplus and establishing requirements as to third party fishing within their respective exclusive fisheries zones.

In the fourth year after entry into force of the Agreement, the parties shall consider whether all management issues should be determined under the procedures for Annex B. If they do not agree, either party may refer the issue to the Arbitrator for decision.

POLLOCK

Stock: Located in Subarea 5 and Divisions 4V, 4W and 4X.

Management: Annex A, joint management.

Access: Canadian vessels may fish in Divisions 4V, 4W, 4X, Subdivision 5Ze and the portion of Division 5Y in the exclusive Canadian fisheries zone. U.S. vessels may fish in Subarea 5 and Division 4X.

Entitlement: 25.6% U.S. 74.4% Canada.

CUSK

Stock: Located in Subdivision 5Ze.

Management: Annex A, joint management.

Access: Vessels of both parties may fish throughout Subdivision 5Ze.

Entitlement: 34% U.S. 66% Canada.

NORTHERN LOBSTER

Stock: Located in the disputed area.

Management: Annex A, joint management until delimitation of the boundary at which time this stock will no longer be recognized (see description below).

Access: The vessels of both parties may fish in the disputed area until the boundary is delimited.

Entitlement: "Neither party shall expand their directed fisheries for this stock, except as authorized by the Commission."

Stock: Located outside the disputed zone.

Management: Annex C, each party shall determine the management measures within its exclusive fisheries zone.

Access: Vessels of each party may fish only in their respective exclusive fisheries zone.

Entitlement: Each country is entitled to the total allowable catch within its own zone.

Additional Terms: The parties agree to review the possibility of reciprocal access to exclusive fisheries zones. If reciprocal access can be agreed upon, but gear conflict provisions are in dispute, either party may refer the gear conflict question to the Arbitrator for decision.

ATLANTIC HERRING

Stock: Located in Divisions 4W and 4X and the Grand Manan Banks in Division 5Y, but not including juvenile herring within 3 miles of the Canadian coast.

Management: Annex B, Canada is party of primary interest.

Access: Canadian vessels may fish throughout Divisions 4W and 4X and the Grand Manan Banks portion of Division 5Y. U.S. vessels may not fish in these waters.

Entitlement: 0% U.S. 100% Canada.

Stock: Located in Division 5Y, excluding the Grand Manan Banks and excluding juvenile herring within three miles of the U.S. coast.

Management: Annex B, U.S. is party of primary interest.

Access: U.S. vessels may fish throughout Division 5Y, except in the Grand Manan Banks portion. Canadian vessels may not fish in these waters.

Entitlement: 100% U.S. 0% Canada.

Stock: Located in Subarea 6 and Division 5Z.

Management: Annex B, U.S. is party of primary interest.

Access: Canadian vessels may fish in Subarea 6 and Division 5Z east of 68 30' west longitude only. U.S. vessels may fish in Subarea 6 and Division 5Z west of 66 west longitude only.

Entitlement: Years 1-3 -- 2000 metric tons to Canada, remainder up to permissible commercial catch to U.S.
Years 4-6 -- 2000 metric tons to Canada, remainder up to permissible commercial catch or 19,000 metric tons (whichever is less) to U.S.; any additional permissible commercial catch is divided 50% U.S. and 50% Canada unless total permissible commercial catch exceeds 45,000 metric tons in which case the additional catch is divided 66.67% U.S. and 33.33% Canada.
After Year 6-66.67% U.S., 33.33% Canada.

Additional
Terms:

Applicable to all herring stocks; after three years, the parties are to review management categorizations. If either party believes the data to be insufficient at that time, another review is to be held after 6 years. After the second review of management categorizations, if no agreement is reached, either party may refer the issue to the Arbitrator for decision.

SEA SCALLOPS

Stock: Located in Subdivision 5Ze

Management: Annex B, Canada is party of primary interest east of 68 30' west longitude. U.S. is party of primary interest west of 68 30' west longitude. Annex A joint management is provided for management measures with respect to size limits (e.g., shell sizes and meat counts).

Access: Vessels of both parties may fish throughout Subdivision 5Ze.

Entitlements: 26.65% U.S. 73.35% Canada.

ATLANTIC COD

Stock: Located in Division 4W and Subdivision 4Vs

Management: Annex C, exclusively Canadian.

Access: Vessels of both parties may fish throughout Division 4W and Subdivision 4Vs.

Entitlement: 1.4% U.S. 98.6% Canada.

Stock: Located in a portion of Division 4X (south and east of lines connecting coordinates 44 20' north latitude, 63 20' west longitude; then 43 north latitude, 65 40' west longitude, then 43 north latitude, 67 40' west longitude).

Management: Annex C, exclusively Canadian.

Access: Vessels of both parties may fish throughout the portion of Division 4X specified above.

Entitlement: 7.5% U.S. 92.5% Canada.

Stock: Located in Subarea 5Y.

Management: Annex C, exclusively U.S.

Access: Vessels of both parties may fish throughout Subarea 5Y.

Entitlement: 98.4% U.S. 1.6% Canada.
Stock: Located in Division 5Z.
Management: Annex B, U.S. is party of primary interest.
Access: Vessels of both parties may fish throughout Division 5Z.
Entitlement: 83% U.S. 17% Canada.

HADDOCK

Stock: Located in Divisions 4V and 4W.
Management: Annex C, exclusively Canadian.
Access: Vessels of both parties may fish throughout Divisions 4V and 4W.
Entitlement: 10% U.S. 90% Canadian.
Stock: Located in Division 4X.
Management: Annex C, exclusively Canadian.
Access: Vessels of both parties may fish throughout Division 4X.
Entitlement: 10% U.S. 90% Canada.
Stock: Located in Subarea 5.
Management: Annex B, U.S. is party of primary interest.
Access: Vessels of both parties may fish throughout Subarea 5.
Entitlement: 79% U.S. 21% Canada.

SILVER HAKE

Stock: Located in Subdivision 5Ze.
Management: Annex B, U.S. is party of primary interest.
Access: Vessels of both parties may fish throughout Subdivision 5Ze.
Entitlement: 90% U.S. 10% Canada.

RED HAKE

Stock: Located in Subdivision 5Ze.

Management: Annex B, U.S. is party of primary interest.

Access: Vessels of both parties may fish throughout Subdivision 5Ze.

Entitlement: 90% U.S. 10% Canada.

ATLANTIC ARGENTINE

Stock: Located in Subarea 5 and Divisions 4V, 4W and 4X.

Management: Annex B, Canada is party of primary interest.

Access: Vessels of both parties may fish throughout Subarea 5 and Divisions 4V, 4W and 4X.

Entitlement: 25% U.S. 75% Canada.

WHITE HAKE

Stock: Located in Divisions 4V, 4W, 4X.

Management: Annex B, Canada is party of primary interest.

Access: Canadian vessels may fish throughout Divisions 4V, 4W and 4X; U.S. vessels may fish in Division 4X only.

Entitlement: 6% U.S. 94% Canada.

Stock: Located in Subarea 5.

Management: Annex B, U.S. is party of primary interest.

Access: U.S. vessels may fish throughout Subarea 5; Canadian vessels may fish only in Subdivision 5Ze and the portion of Division 5Y in the exclusive Canadian fisheries zone.

Entitlement: 94% U.S. 6% Canada.

ILLEX SQUID

Stock: Located in Subareas 3, 4, 5 and 6.

Management: Annex B; Canada is party of primary interest in Subareas 3 and 4; U.S. is party of primary interest in Subareas 5 and 6.

Access; Vessels of each party may fish only in their respective exclusive fisheries zone; no fishing in disputed area except by agreement.

Entitlement: Does not apply.

ATLANTIC REDFISH

Note: The provisions applicable to the immediately following four stocks (located in Divisions 4R, 4S, 4T, 4V, 4W, 4X; 3-O and 3P) terminate at the end of the tenth year after entry into force of the Agreement.

Stock: Located in Divisions 4V, 4W and 4X.

Management: Annex C, exclusively Canadian.

Access: Vessels of both parties may fish throughout Divisions 4V, 4W and 4X.

Entitlement: 35% U.S. 65% Canada.

Stock: Located in Divisions 4R, 4S and 4T.

Management: Annex C, exclusively Canadian.

Access: Vessels of both parties may fish throughout Divisions 4R, 4S and 4T.

Entitlement: To be determined under the new management system, but must limit U.S. entitlement to 10% of the permissible commercial catch for vessels based outside the Gulf of St. Lawrence. Canadian entitlement to include remaining 90% plus an unstated amount for Canadian vessels based in the Gulf of St. Lawrence.

Stock: Located in Division 3-O.

Management: Annex C, exclusively Canadian.

Access: Vessels of both parties may fish throughout Division 3-O.

Entitlement: 600 Metric tons U.S., unless after the boundary delimitation the U.S. requests and Canada agrees to exchange this entitlement for an equal amount of the redfish stock located in Division 3P, which would be subject to the same type of management and access provisions: the remainder of the catch is reserved for Canada.

Stock: Located in Division 3P.
 Management: Annex C, exclusively Canadian.
 Access: Canadian vessels may fish throughout Division 3P. U.S. vessels may fish throughout Division 3P if an entitlement is established (see preceding stock).
 Entitlement: See preceding stock.
 Stock: Located in Subarea 5.
 Management: Annex C, exclusively U.S.
 Access: Vessels of both parties may fish throughout Subarea 5.
 Entitlement: 99% U.S. 1% Canada.
 (Provisions with respect to this stock do not lapse after ten years).

LOLIGO SQUID

Note: The provisions applicable to the following stock terminate at the end of the tenth year after entry into force of the Agreement.
 Stock: Subarea 6 and Division 5Z.
 Management: Annex C, exclusively U.S.
 Access: Vessels of both parties may fish throughout Subarea 6 and Division 5Z.
 Entitlement: 91% U.S. 9% Canada.
 Additional Terms: Management measures applicable to Canadian vessels may be more restrictive than management measures applicable to U.S. vessels to the extent reasonable necessary to limit incidental catch and avoid gear conflict. Such measures, however, shall be designed to assure Canadian vessels the opportunity to catch their full entitlement.

CERTAIN GROUND FISH

Stocks: Groundfish in Subareas 3 and 4, and not expressly covered by any other provision in the Annexes.
 Management: Annex C, exclusively Canadian.

Access: Canadian vessels may fish throughout Subareas 3 and 4; U.S. vessels may catch these stocks only incidentally in fishing for other stocks.

Entitlement: 1% U.S. 99% Canada.

Stocks: Groundfish located in Subarea 5, and not expressly covered by any other provision in the Annexes.

Management: Annex C, exclusively U.S.

Access: U.S. vessels may fish throughout Subarea 5; Canadian vessels may catch these stocks only incidentally in fishing for other stocks.

Entitlement: 99% U.S. 1% Canada.

Stocks: Groundfish in Division 4X to which U.S. vessels are given access under provisions in the Annexes, and which are located in the area from three to twelve miles from the coast of Grand Manan Island but seaward of 12 miles from the coast of mainland Canada.

Management: As provided for each stock.

Access: U.S. vessels may fish this area, but access is restricted to traditional patterns of fishing and levels of effort.

Entitlement: As provided for each stock.

Additional Terms: Non-discriminatory Canadian gear conflict regulations apply.